Reg. No. GR/RNP/GOA/32

RNI No. GOA ENG/2002/6410

Panaji, 4th March, 2004 (Phalguna 14,1925)

SERIES II No. 49

OFFICIAL GAZETTE

GOVERNMENT OF GOA

SUPPLEMENT

GOVERNMENT OF GOA

Department of Labour

Order

No. CL/Pub-Awards/2001/2667

The following Award dated 16-5-2001 in reference No.IT/38/2000 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner, Labour & Ex-officio Joint Secretary.

Panaji, 19 th June, 2001.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit J. Agni, Hon' ble Presiding Officer)

Ref. No. IT/38/2000

Workmen represented by the
President,
Goa Mazdoor Union,
Post Box 119,
Dourado Building,
1st Floor,
Near Municipal Market,
Vasco-da-Gama. ..... Workmen /Party I

V/s

M/s. Kores (India) Ltd.,
Carbon Unit, Shed No.52,
Plot No. L-71, Verna,
Electronic City,
Verna-Goa. ..... Employer/ Party II

Workmen/Party I- Represented by Adv. Shri H. Dourado.

Employer/Party II- Represented by Adv. Shri M. S. Bandodkar.

Panaji, dated : 16-5-2001.

AWARD - II

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by Order dated 4th May, 2000 bearing No. IRM/CON/(92-3A)/99/2423 referred the following dispute for adjudication of this Tribunal.

(1) Whether the action of the management of M/s. Kores (India) Limited (Carbon Unit), Verna-Goa, in dismissing the following workmen from services with effect from 14-12-1999, is legal and justified?

1. Shri Vinayak Pednekar, Operator.
2. Shri Maheshwar Pednekar, Operator.
3. Shri Satish Naik, Trainee Fitter.

(2) If not, to what relief the above three workmen are entitled ?

2 On receipt of the reference a case was registered under No. IT/38/2000 and registered A.D. notice was issued to the Parties. In pursuance to the said notice, the parties put in their appearance. The Workmen /Party I (for short "Union") was represented by Adv. Shri H. Dourado, who is also the President of the Union namely Goa Mazdoor Union. The Employer/Party - II (for short "Employer") was represented by Advocate Shri M. S. Bandodkar. Since both the parties submitted that the matter was likely to be settled, at their request the case was fixed on 27-2-2001 for filing of the terms of settlement. On the said date both the parties submitted that the dispute was settled with reference to the workmen Shri Vinayak Pednekar and Shri Maheshwar Pednekar. The parties filed the terms of the settlement dated 27-2-2001 at Exb. 4 and they prayed that consent award be passed in terms of the said settlement. Accordingly this Tribunal passed the consent award namely Award - I dated 1-3-2001 concerning workmen Shri Maheshwar Pednekar and Shri Vinayak Pednekar in terms of the said settlement dated 27-2-2001. The case however proceeded further concerning the workman Shri Satish Naik. However on 30-4-2001 the workman Shri Satish Naik remained present in person and Advocate Shri Bandodkar appeared on behalf of the employer. They submitted that a settlement was arrived at concerning the workman Shri Satish Naik and they filed the terms of the settlement dated 30-4-2001 at Exb-6. The workman Shri Satish Naik and Advocate Shri Bandodkar prayed that consent award be passed in terms of the settlement dated 30-4-2001. I have gone through the terms of the settlement and I am satisfied that the said terms are certainly in the interest of the workman. I therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 30-4-2001 Exb. 6.

ORDER

It is agreed between the parties that following workman who is concerned in the reference shall be paid an amount mentioned against his name in full and final settlement of his claim arising out of his employment with the company and arising out of the reference.

Name	Amount in Rs.
1. Satish Naik	Rs. 4750/- (Rupees four thousand seven hundred and fifty only)

It is further confirmed by the workman concerned in the reference that in view of the clause No. (1) above he shall have no claim of whatsoever nature against the company including any claim of reinstatement of re-employment.

No order as to cost. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/2001/2668

The following Award dated 16-5-2001 in Reference No. IT/80/ /99given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolkar, Commissioner. Labour & Ex-officio Joint Secretary.

Panaji, 19th June, 2001.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)
Ref. No. IT/80/99

Shri Sandesh Kuttikar,
C/o. Prakash Salelkar,
Tony Nagar,
Sanvordem-Goa. ..... Workman/Party I

V/s

M/s. Gomantak Auto Service,
Anandwadi, Sanvordem-Goa. ..... Employer/Party II

Workman/Party-I present in person.

Employer/Party-II represented by Adv. Shri K. L. Gaonkar.

Panaji, dated : 16-5-2001.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 18-6-1999 bearing No. IRM/CON/SG/ (2)/99/3057 referred the following dispute for adjudication of this Tribunal.

"(1) Whether the action of the management of M/s.Gomantak Auto Service, Sanvordem-Goa, in terminating the services of Shri Sandesh Kuttikar, Sanvordem-Goa, with effect from 26-10-98 is legal and justified ?

(2) If the answer to the above is negative, then to what relief the workman is entitled ?"

2. On receipt of the reference a case was registered under No. IT/80/99 and Registered A.D. notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman/Party-I (for short 'Workman') filed his statement of claim at Exb.3. The facts of the case in brief as pleaded by the workman are that he joined the services of the Employer/Party-II (for short employer) on 8-6-95 as Workshop Incharge on salary of Rs. 3000/- p. m. On 26-10-98 the employer restrained the workman from signing the muster roll and joining the duties and upon being questioned the employer informed that the services of the workman are terminated. That by letter dated 26-10-98 the workman questioned the employer as regards sudden termination of his services but no reply was received to the said letter. That thereafter by letter dated 13-11-98 the workman called upon the employer to pay his salary for the month of September and October, 98 and also requested the employer to disclose the grounds of termination of services. That the workman continuously attended the workshop requesting the employer to take him back in service and also to pay his arrears of salary but the employer refused to do so. That the workman thereafter by letter dated 2-12-98 requested the Dy. Labour Commissioner to direct the employer to reinstate him and to pay his arrears of wages. That before the Dy. Labour Commissioner the employer contended that the amount of Rs. 3000/- had been paid to the workman towards his salary for the month of September, 98 which the workman denied. Then the employer thereafter agreed to pay the salary for the month of September and October, 98 to the workman but the same was never paid. The workman contended that the termination of his services by the employer is arbitrary, illegal and unjustified and no prior notice was given to him before termination of his services. The workman therefore claimed that he is entitled to reinstatement in service with continuity in service from 26-10-98 and also to the arrears of salary for the month of September and October, 98. The workman also claimed that he is entitled to compensation equivalent to monthly salary from 26-10-98 till the date of his reinstatement and Rs.10,000/- towards mental torture, agony and harassment.

3. The employer filed written statement at Exb-4. The employer denied that the workman is 'workman' under the Industrial Disputes Act, 1947 and stated that he was acting as a Manager and was discharging the duties of administrative nature. The employer stated that the establishment of M/s. Gomantak Auto Service was taken over by them from Shri Ramswaroop Singh on 13-12-98 and the workman was continued in service from 22-12-97 at which time the salary of the workman was Rs. 2000/-

p.m. and in the month of May-June, 98 his salary became Rs. 3000/- p. m. The employer stated that the workman remained absent from duty since 26-10-98 without informing the employer or the persons in the workshop and resumed duties only on 1-12-98. The employer denied that the salary of the workman was not paid for the month of September, 98 and stated that the salary for the month of October, 98 was not paid because the workman was not on duty in the month of November, 98. The employer stated that the services of the workman were terminated because he had remained absent for about 34 days without giving satisfactory reasons. The employer denied that the workman was entitled to any relief as claimed by him. The workman thereafter filed rejoinder at Exb. 5.

4. On the pleadings of the parties, issues were framed at Exb. 6 and thereafter the evidence of the workman was partly recorded. In the course of the proceedings, the workman and Advocate Shri K. L. Gaonkar representing the employer submitted that the dispute between the parties was amicably settled and they filed the terms of the settlement dated 30-4-2001 duly signed by the parties at Exb.11. The workman and the employer also filed an application dated 30-4-2001 praying that award be passed in terms of the said settlement. I have gone through the terms of the settlement dated 30-4-2001 which are duly signed by the parties and I am satisfied that the said terms are certainly in the interest of the workman. I therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 30-4-2001 Exb. 11.

ORDER

1. It is agreed between Mr. Sandesh Kuttikar and the employers viz. M/s. Gomantak Auto Services, M/s. Trimurthy Auto Services and M/s. Gomantak Auto Garage represented by Adv. K. L. Gaonkar that Mr. Sandesh Kuttikar stands properly relieved from the services with effect from 26-10-98 by M/s. Gomantak Auto Services as also from 15-2-2001 by the successor employer running the said establishment in the name of M/s. Gomantak Auto Garage.

2. That the employer shall pay to Shri Sandesh Kuttikar an amount of Rs. 30,000/- (Rupees thirty thousand only) by Demand Draft towards full and final settlement of all his legal dues and that he shall not have any claim of whatsoever nature against M/s. Gomantak Auto Services and successor employer Viz. M/s. Trimurthy Auto Services and M/s. Gomantak Auto Garage.

3. The workman agrees that he has received an amount of Rs. 7,500/- (Rupees seven thousand five hundred only) from M/s. Gomantak Auto Garage. However, the employers agree that this amount shall be treated to have been paid towards the settlement and shall not be subject to adjustment against Rs. 30,000/-.

4. That the last employer M/s. Gomantak Auto Garage shall issue him bonafide service certificate.

5. In view of above clauses, both parties agree that the dispute referred by Government of Goa vide order dated 18-6-99 stands conclusively settled and that both parties agree to furnish a copy of this settlement to the Hon'ble Industrial Tribunal with a request to approve the same and for passing the consent award.

6. Both parties agreed to send a copy of this settlement to the Secretary, Labour, Government of Goa, Secretariat, Panaji-Goa.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/2001/267

The following Award dated 23-5-2001 in Reference No. IT/29/96 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mandolkar, Commissioner, Labour & Ex-officio Joint Secretary.

Panaji, 19th June, 2001

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/29/96

Shri Ramnath Wadkar (Since deceased), rep. by his legal heirs
(1) Mrs. Rashmi Ramnath Wadkar
(2) Kum. Roshni Ramnath Wadkar
(3) Kum. Ankita Ramnath Wadkar
(4) Shri Sitaram Ramnath Wadkar
r/o Gurim, Bardez-Goa.
Rep by Goa Trade & Commercial Workers Union, Velho Bldg., Panaji - Goa. ..... Workman / Party I

V/s

M/s. Thivim Pharmaceuticals,
Thivim Industrial Estate,
Karaswada, Bardez - Goa. ..... Employer/Party II

Party I - Represented by Adv. Shri Suhas Naik.

Party II - Represented by Adv. Shri A. Agha.

Panaji, dated 23-5-2001

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Government of Goa by Order dated 9-5-96 bearing No.28/8/96-LAB referred the following dispute for adjudication of this Tribunal.

(1) "Whether Shri Ramnath Wadkar is a workman or not within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 (Central Act 14 of 1947)?

(2) "If answer to (1) above is affirmative, whether the action of the employer M/s. Thivim Pharmaceuticals, Thivim Industrial Estate, Karaswada, Bardez-Goa, in terminating the services of Shri Ramnath Wadkar, with effect from 31-10-94 is legal and justified?"

If the answer to (2) above is negative, to what relief the workman is entitled?"

2. On receipt of the reference a case was registered under No. IT/29/96 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman/Party I Shri Ramnath Wadkar (for short, "Workman") filed its statement of claim at Exb. 4. The facts of the case in brief as pleaded by the workman are that he joined the services of the Employer/Party II (for short, "Employer") as a technical supervisor on 24-2-87. That prior to that he was working at Goa Antibiotics & Pharmaceuticals Ltd., as a skilled worker from 1-1-83 to 21-2-87. That on 30-1-87 he was called by the employer to repair their machines as they were experiencing some difficulties in stripe packing of Tivizine Plus tablets and as a matter of gesture of good will he repaired the said machine. That seeing the work of performance the employer wrote various letters to him asking him to join their services and ultimately he resigned from his services with Goa Antibiotics & Pharmaceuticals Ltd., and joined the services of the employer on 24-2-98. That as a technical supervisor the work of the workman was to supervise and maintain the machinery with the help of the helpers and operators, maintain register of stock and consumption of aluminium foil in order to keep a check on the rejection level, operate the machines when there was no maintenance work. That his leave was sanctioned by the Production Manager like in the case of operators and helpers and he was allotted jobs from time to time by the Production Manager and he was enjoying all the service conditions like other workmen. That he was issued a memo dated 9-10-93 and he replied to the memo on 9-10-93 giving sufficient explanation. That he received another memo on 22-3-94 which was also replied by him on 22-3-94. That suddenly on 31-10-94 the employer issued a letter of termination to the workman charging that he was working inefficiently in a gross and negligent manner and as such the management had lost confidence in him. That no show cause notice or charge sheet was issued to him nor any enquiry was conducted against him to prove the charges levelled against him. That the workman sent a letter dated 7-11-94 to the employer stating that the action of the management in terminating his services without holding any enquiry and on the pretext that the management had lost confidence in him is illegal and unjustified. Therefore he requested the management to reinstate him in service with full back wages and continuity in service. That no reply was received to the said letter of the workman and thereafter the workman approached the Goa Trade & Commercial Workers Union and a dispute was raised by the said union before the Asst. Labour Commissioner, Mapusa, concerning the illegal termination of the service of the workman. That by letter dated 22-12-94 the employer informed the Asst. Labour Commissioner that the workman is a technical supervisor and not a "workman" under the Industrial Disputes Act, 1947. That several meetings were held by the Asst. Labour Commissioner which were attended by the workman as well as the employer but no settlement could be arrived at and therefore failure of the conciliation proceedings was recorded on 8-9-95. The workman contended that the employer did not comply with the provisions of the Industrial Disputes Act, 1947 while terminating his services w. e. f. 31-10-94. The workman therefore contended that termination of his service by the employer is illegal and unjustified and therefore he is entitled to reinstatement in service with full back wages. The workman also contended that he is a "Workman" under Sec. 2(s) of the Industrial Disputes Act, 1947.

3. The employer filed written statement at Exb. 5. The employer stated that the workman worked in supervisory capacity as technical supervisor to supervise over the working of other workers, skilled as well as unskilled and since he is not a "Workman" he is not entitled to raise industrial dispute or claim any benefit under the said Act. The employer stated that in reply to the memo dated 9-10-93 and 22-3-94 the workman had admitted his guilt in reply of the charges levelled against him. The employer stated that the management noticed that the workman continued his negligence and inefficiency in his supervisory work resulting into manufacturing of defective packing of medicinal products thereby resulting into loss of reputed clientele and financial loss of the employer. The employer stated that the management lost faith and confidence in the workman and in view of the admission of the charges by the workman, the employer had no alternative but to terminate his services and accordingly a letter dated 31-10-94 was issued to the workman with a cheque for Rs. 27,719/- towards terminal benefits and full and final settlement. The employer stated that the workman received the said letter and also the cheque under protest and encashed the said cheque on 7-11-94. The employer stated that since the workman had admitted the charges levelled against him the employer was not obliged to have the charges inquired. The employer stated that the present dispute has been raised by the workman at the instigation of the union and stated that the workman has been working with other employers. The employer denied that termination of service of the workman is illegal or unjustified. The employer stated that the workman is not entitled to any relief as claimed by him. The workman thereafter filed rejoinder at Exb.7.

4. On the pleadings of the parties following issues were framed at Exb. 8.

1. Whether the Party I proves that he is a workman as defined under Sec. 2 (S) of the Industrial Disputes Act, 1947?

2. Whether the Party I proves that the termination of his services by the Party II w. e. f. 31-10-94 is illegal and unjustified?

3. Whether the Party II proves that the services of Party I were terminated because the Party II lost faith and confidence in him as he admitted the charges levelled against him?

4. Whether the Party I is entitled to any relief?

5. What Award?

5. After the issues were framed the evidence of the workman was recorded. After completing the evidence of the workman the case was fixed for the evidence of the employer. In the course of the recording of the employer's evidence the workman expired and an application dated 20-9-99 was filed on behalf of the legal heirs of the deceased workman for bringing them on record in place of the deceased workman. The said application was not objected to by the employer and hence by order dated 4-10-99 the said application was allowed and consequently the legal heirs of the deceased workman were brought on record in place of the deceased workman.

6. My findings on the issues are as follows:

Issue No. 1:	In the negative.
Issue No. 2:	Does not arise.
Issue No. 3:	Does not arise.
Issue No. 4:	In the negative.
Issue No. 5:	As per order below.

REASONS

7. *Issue No. 1*: The contention of the workman as per the statement of claim filed by him, is that he was a technical supervisor to supervise and maintain machinery with the help of the helpers and operators. His contention is that he used to maintain register of stock and consumption of aluminium foil inorder to keep a check on the rejection level, and operate the machines. His contention is that he was being allotted the job from time to time by the Production Manager who was sanctioning his leave along with the other operators and helpers and he was enjoying all the service conditions as enjoyed by other workmen. His contention is that he was working in general shift and whenever he worked over time, overtime wages were paid to him. The contention of the workman therefore is that he is a "Workman" within the meaning of Sec. 2 (s) of the Industrial Disputes Act, 1947. The contention of the employer on the other hand is that the workman was employed as Technical Supervisor and he was working in supervisory capacity. The employer's contention is that the workman was supervising over the work of the other workers as well as on the machines and therefore he is not a "workman" within the meaning of Sec. 2 (s) of the Industrial Disputes Act, 1947.

8. The reference itself mentions whether the workman Shri Ramnath Wadkar is a "Workman" or not within the meaning of Sec. 2 (s) of the Industrial Disputes Act, 1947. The burden therefore was on the workman to prove that he falls within the definition of Sec. 2 (s) of the Industrial Disputes Act, 1947. The issue No. 1 was framed accordingly thereby casting the burden on the workman to prove that he is a "Workman" within the definition given in the Act. The Bombay High Court in the case of S. A. Sarang v/s W. G. Forge & Allied Industries Ltd., Thane and Others reported in 1995 I CLR 837 has held that it is a settled law that it is the actual work done by the employee which is determinative of whether he falls within the scope of the definition of "workman" under Sec. 2 (s) of the Act and not his designation. Therefore in the present case what is required to be considered is the principal or main work done by the workman.

9. The workman has examined himself whereas the employer has examined its partner Dr. Dilip Patkar and Shri K. K. Sukhwani, the Manager in the Local Office of ES at Margao. The evidence of Shri K. K. Sukhwani on the issue of "workman" is not relevant as his evidence is on the issue of gainful employment of the workman after termination of his service. The workman in his deposition stated that he was working with the employer as a Technical Supervisor since January, 1987 and he produced the appointment letter dated 22-1-87 at Exb. W-1. He stated that as a Technical Supervisor he used to do the work of an operator such as sugar coating, granulation, strip packing, compression of tablets, liquid filling and sealing and maintaining the machines. He stated that the above work is normally done by an operator, and that he used to contribute towards ESI contribution. He stated that he used to work in shifts and was reporting to the Production Manager who was supervising over his work and also over the work of other operators and supervisors. He stated that some times he was paid overtime and he had no authority to sanction leave of the employees of the employer. In his cross examination he admitted that he had received the letter of appointment dated 24-3-87 Exb. E-1. He admitted that in clause 7 of the said letter of appointment it was stated that his employment is in the nature of working as technical supervisor and that he will be responsible for supervision and working of various machines in the factory. He admitted that in clause 3 of the letter of appointment dated 22-1-87 Exb.W-1 it was stated that he will be responsible for the supervision of working of the various machines in the factory. He denied the suggestion that he was working as the supervisor. He admitted that in his reply dated 9-10-93 Exb. W-6 and 24-3-93 Exb. W-8 he had stated that he will see that rejection of aluminium foil is reduced. The employer's witness Dr. Dilip Patkar, who is the partner of the employer firm, stated in his deposition that the nature of the duties to be performed by the workman were mentioned in the clause 7 of the letter of appointment Exb E-1 which was duly accepted by the workman. He stated that the workman was supervising and training the various workers who were working on the machine. He stated that it was the duty of the workman being the supervisor to see that the strip packing machine is set up and tuned properly and also that the machine is maintained properly from time to time. In his cross examination he stated that during the period 1987 to 1994 not more than 35 persons were working in the factory and that only one supervisor was employed apart from the Production Manager. He stated that there were about 8 to 10 machines in the factory during the period 1987 to 1994 and the said machines were operated by operators. He denied the suggestion that the maintenance and repairing of the machines was done by the workman and stated that the same work was done by outside agency and some times by the workers who were working on the machines under the supervision of the workman. He stated that during the period 1987 to 1994 the factory was being run in single shift.

10. Admittedly the employer is a pharmaceutical company manufacturing tablets and liquid syrups. Though the workman stated in his evidence that he used to do the work of an operator such as sugar coating, granulation, strip packing , compression of tablets, liquid filling and sealing and maintaining the machines,

no evidence has been led by the workman to support his above contentions. It has come in the cross examination of the employer's witness Dr. Patkar that the operators are working on the machines. Admittedly the workman was not appointed as an operator and since it is his case that he was doing the work which was being done by an operator, the burden was on him to prove the same. However, he has failed to discharge this burden. The workman has also stated in his deposition that some time he worked over time and he was paid overtime wages. However, no evidence has been produced by him to prove this fact. The workman has admitted the appointment letters dated 22-1-87 Exb. W-1 and the letter dated 24-3-87 Exb. E - 1. In both these letters the work to be done by the workman has been specifically mentioned. Infact the relevant appointment letter is the letter dated 24-3-87 Exb. E-1. The letter dated 22-1-87 Exb. W-1 is the preliminary letter of appointment. In this letter it is mentioned that the detailed letter of appointment would be issued to the workman and accordingly the letter dated 24-3-87 Exb. E-1 was issued. The workman in his evidence has admitted the receipt of the said appointment letter. He has admitted that in clause 7 of the said letter his duties as a technical supervisor are mentioned. In clause 7 of the letter of appointment dated 24-3-87 Exb. E - 1 it is mentioned as follows:

> "Your employment will be in the nature of working as Technical Supervisor by which you will be responsible for supervision and working of the various machines in our factory".

Thus, as per the said clause the duties of the workman were to supervise over the work done by the workers as well as to supervise over the machines in the factory. If according to the workman he was doing the work other than what is mentioned above or that he was doing other work in addition to the above work, the burden was on him to prove the same. As mentioned earlier the workman has failed to discharge this burden. On the contrary the documentary evidence which is on record shows that the workman was discharging the duties as per his appointment letter. In reply dated 9-10-93 Exb. W-6, which the workman had given in answer to the memo issued to him, he had stated that he could not check the strip on the machine operated by Mr. Tukaram because many boys were absent because of Ganesh festival and therefore he was operating the sealing machine. He had stated that Mr. Tukaram was unable to control the machine. He had stated that till Tukaram gets proper training he will personally attend the machine, and see that the rejection of aluminium foil is reduced. In the said reply he had also stated that the machine had become old and had pointed out defects in the machine. He had suggested the doing of over all rolling (overhauling) of the machine by an expert person. This reply of the workman himself shows that he was supervising over the work of the workers who were operating the machines and also he was supervising over the working of the machines. This reply also shows that the workman was not carrying out the repair work of the machines but it was being got done from outside agency. The above evidence clearly shows that the operators were working under him and he was supervising over their work. The above evidence also shows that the workman was supervising over the working of the machines.

11. The workman in his evidence has stated that he was reporting to the Production Manager and his work was being supervised by the Production Manager. He has also stated that he had no authority to sanction leave of the employees. The Bombay High Court in the case of Ramesh Ramrao Wase v/s The Commissioner, Revenue Division, Amravati, reported in 1996 II LLJ pg. 55, has held that if supervision is required to be made over the quality of the work and over other aspects such as to see and examine whether the work is complete or not in satisfactory manner that also becomes the supervisory work. The High Court in that case held that even if the petitioner was required to do the work as per the instructions of the Block Development Officer or Deputy Engineer, that does not give him the character of a workman. The High Court held that the term "Supervisory Work " does not mean that the concerned person must have control over the subordinates and the person concerned should have the power to sanction leave, give promotions, etc., as it is only one of the facts of the supervisory work. In view of the above judgement of the Bombay High Court there is no substance in the contention of the workman that he is a workman because he was reporting to the Production Manager or that because his work was being supervised by the Production Manager or that he did not have the powers to sanction leave of the employees. In the case of Vinayak Baburao Shinde v/s S. R. Shinde & Ors. reported in 1985 I CLR 318, the Bombay High Court, in para. 8 of the judgement has observed as follows:

> "A Supervisor is distinguished from a Manager in as much as he has no powers to command others to do a particular work. His function is to see that the work is done in accordance with the norms laid down by the Management. If the work is not done he has to assist the workman to do it correctly in accordance with the norms. If however, a workman does not do the work correctly or properly, the supervisor has no power to take any disciplinary action. In the case of leave applications, a supervisor can only recommend them and not sanction or reject them. The latter being within the jurisdiction of the Manager."

In the case of Shrikant Vishnu Palwankar V/s Presiding Officer of First Labour Court and Ors. reported in 1992 I CLR 184, the Bombay High Court has observed that when a person is working as a supervisor, he is required to oversee the working of the Department since he is put in charge of the turnout of the Department. The High Court further observed that he has to efficiently manage the men, machines and the material under his control. In the present case replies dated 9-10-93 Exb. W-6 and 24th March, 1994 Exb. E-4, given by the workman to the memos issued to him, show that the workman was overseeing the work done by the workman working on the machines and was getting the work done from them. He had to see that material used for the strip packing namely the aluminium foil, is used properly and the percentage of rejection of the aluminium foil during the strip packing was to the minimum so as to avoid loss. For this, he had to also see that the machines were in proper working condition and if they were not they were put in a proper working condition. The Judgements of the Bombay High Court in the case of Ramesh Ramrao Wase (supra) and Vinayak Baburao Shinde (supra) squarely apply to the facts of the present case. Therefore considering the evidence on record which is discussed by me above and in the light of the Judgements of the Bombay High Court in the case of Ramesh Ramrao Wase (supra) and Vinayak Baburao Shinde (supra), I hold that the duties which were being performed

by the workman were of supervisory nature. The workman has not brought on record any evidence to show that any person other than him was working in supervisory capacity. The employer has produced the statement of full and final settlement of the workman at Exb. E-3. The workman in his cross examination has admitted the receipt of the said statement of account. He has also admitted that he received an amount of Rs. 27,719/- as mentioned in the said statement of account. The said statement of account shows that at the time when the services of the workman were terminated his salary was Rs. 2901/- per month.

12. Sec. 2 (s) of the Industrial Disputes Act, 1947 defines "Workman". As per Sec. 2 (s) (iv) a person who is employed in a supervisory capacity and who draws wages exceeding one thousand six hundred rupees per month is not a "workman". He is an exception and does not fall within the meaning of "workman" as defined under Sec. 2 (s) of the Act. In the present case it has been held by me that the workman Shri Ramnath Wadkar was performing the duties mainly of a supervisory nature. As per the statement of account Exb.E-1 which is admitted by the workman, his salary was Rs.2901/- at the time when his services were terminated.Therefore since the workman Shri Ramnath Wadkar was performing the duties mainly of a supervisory nature and was drawing wages of more than Rs. 1600/- p. m., he falls within the exceptions to the definition of "Workman" as defined under Sec. 2 (S) of the Industrial Disputes Act, 1947, and hence he is not a "Workman". I, therefore hold that the Shri Ramnath Wadkar is not a "Workman" as defined under Sec. 2 (S) of the Industrial Disputes Act, 1947. Hence, I answer the issue No. 1 in the negative.

13. *Issue Nos. 2, 3 and 4 :* The appropriate Government can make a reference of only an industrial dispute for adjudication by the Industrial Tribunal, and not any other dispute. What is industrial dispute is defined under Sec. 2 (K) of the Industrial Disputes Act, 1947. " Industrial dispute" means the dispute or difference must be concerning a workman and if it is not, there is no industrial dispute. Who is a "workman" is defined under Sec. 2 (S) of the Industrial Disputes Act, 1947. After analysing the evidence on record, it has been held by me that the workman Shri Ramnath Wadkar is not a "Workman" as defined under Sec. 2 (S) of the Industrial Disputes Act, 1947. This being the case the dispute which is referred by the Government is not an "industrial dispute". Since there is no industrial dispute, the reference made by the Government is bad in law and not competent and the same is liable to be rejected. Since the reference itself is bad in law and not competent, the question of deciding issue nos. 2 and 3 does not arise. Also, since the deceased workman Shri Ramnath Wadkar is not a "Workman" under the Act, and the reference itself is not competent and is liable to be rejected, the legal heirs of the deceased workman are not entitled to any relief. I, therefore answer the issue No. 4 in the negative. I, therefore answer the issues accordingly.

In the circumstances, I pass the following order.

ORDER

It is hereby held that Shri Ramnath Wadkar is not a "Workman" within the meaning of Sec. 2 (S) of the Industrial Disputes Act, 1947. It is hereby further held that the dispute referred by the Government is bad in law and not competent as there is no industrial dispute. The reference made by the Government is therefore rejected.

No order as to cost. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/2001/3042

The following Award dated 22-6-2001 in Reference No. IT/15/98 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolkar, Commissioner, Labour and Ex-officio Joint Secretary.

Panaji, 11th July, 2001.

IN THE INDUSTRIAL TRIBUNAL,
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

No. IT/15/98

Mrs. Veena V. Naik,
Sancordem, Goa. ..... Party I

V/s

1. M/s. Goa Resistors Pvt. Ltd.,
Collem Electronics Complex,
Collem - Goa. ..... Party II (1)

2. The President,
Goa Trade & Commercial Workers Union,
Velho's Building, 2nd Floor,
Panaji - Goa. ..... Party II (2)

Party I- Represented by Adv. Shri A. Kundaikar.

Party II- (1) - Represented by Adv. Shri P. J. Kamat.
Goa Trade & Commercial Workers Union - Represented by Adv. Shri Subas Naik

Panaji, dated : 22-6-2001

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 20th February, 1998 bearing No. IRM/CON/(61)/95/7419 referred the following dispute for adjudication by this Tribunal :

"Whether the Memorandum of Settlement No. IRM/CON/ /(98)/94 dated 17-11-94 between the management of M/s. Goa Resistors Pvt. Limited, Collem-Goa, and its workman represented by Goa Trade & Commercial Workers Union, is binding on the workman Mrs. Veena V. Naik and whether the demand of Mrs. Naik for reinstatement is legal and justified ?

What relief Smt. Veena V. Naik is entitled to in case it is decided that her retrenchment was not legal and justified ?"

2. On receipt of the reference a case was registered under No. IT/15/98 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Party I (for short "Workman") filed her statement of claim at Exb. 4. The facts of the case in brief as pleaded by the Workman are that she was employed with the Employer-Party II M/s. Goa Resistors Pvt. Ltd., (for short, "Employer") as an operator vide letter dated 29-11-86. That subsequently the services of the workman were confirmed vide letter dated 5-4-89. That on account of pre-delivery labour pains the workman was admitted to Kamat Nursing Home, Ponda, on 2-10-94 and this fact was informed to the employer through the co-worker Ms. Nalini Verekar and 8 days earned leave was requested vide note sent through her. That on the expiry of 8 days leave the workman sent another note through said Nalini Verekar requested for 3 months maternity leave. That on being informed by the co-worker that leave was not sanctioned the workman applied for maternity leave from 8-10-94 to 7-1-95 vide registered A/D letter dated 17-10-94. That on 21-1-95 the employer informed the workman that due to continued low production and lack of demand in the market her services along with the other workers had been retrenched from 1-11-94. That prior to retrenchment no notice was given to her indicating the reasons for retrenchment nor any notice pay or retrenchment compensation was paid to her. The workman contended that her retrenchment is in violation of the provisions of Sec. 25F of the Industrial Disputes Act, and therefore the same is illegal and bad in law. That on the expiry of the maternity leave the workman reported for duty along with the joining report but she was refused employment and therefore she filed conciliation proceedings before the Asst. Labour Commissioner, who declined to interfere in the matter. That the workman filed writ petition in the Hon. High Court and the Hon. High Court allowed the writ petition and remanded the matter back to the Labour Commissioner to decide the matter afresh. That on remand the matter was admitted in conciliation and the conciliation proceedings having failed, failure report was sent to the Government. The workman contended that the termination of her service is in violation of principles of natural justice as well as the same is illegal and unjustified. The workman contended that the purported settlement entered into by the Goa Trade & Commercial Workers Union (for short, "GT & CW Union") with the employer is not binding on her. The workman therefore claimed that she is entitled to reinstatement in service with full back wages.

3. The employer filed written statement at Exb. 6. The employer stated that the reference is not maintainable because the dispute which is referred is not an industrial dispute as defined u/s 2K of the Industrial Disputes Act, 1947 and the conciliation settlement signed u/s 12 (3) of the Industrial Disputes Act, is binding on all the workman of the establishment. The employer stated that as per their audited balance sheet for the accounting year 1994-95 they had accumulated losses of Rs.1,13,24,705/- as against the capital base of Rs. 43,64,860/-. The employer stated that its net worth had been totally eroded and the operations had turned sides, besides large sales were overdue against the borrowings from financial institutions and Government authorities and therefore the employer had no option either to cut the cost or close down the factory. The employer stated that right from the year 1988 their workers were the members of GT & CW Union and the employer had always negotiated with the said union and signed wages settlements dated 1-1-89 and 8-4-91. That after informing the union and the workers about the intention of the employer a notice dated 13-8-94 was displayed on the notice board and copy of the same was endorsed to the Labour Commissioner, Panaji, Dy. Labour Commissioner, Margao and the President of GT & CW Union intimating the workers that those who are willing to get themselves relieved from service they will be settled immediately. That since there was no reponse from the workers the employer decided to retrench some workers who were surplus. That thereafter a meeting was held by the workers and the union on 1-10-94 to discuss about the facts of the case and the decision to retrench was postponed. That the workers resorted to illegal and unjustified strike on 3-10-94 by remaining absent. That thereafter the union and the committee members of Goa Resistors Union met on 26-10-94 and 31-10-94 where agreement was reached for reducing employment strength by 18 and the quantum of benefits to be given to each one of them. That the employer and the union approached the conciliation machinery and meetings were held on 8-11-94 and 9-11-94 and ultimately a settlement on retrenchment was reached before the conciliation officer on 17-11-94. That the workman was a member of GT & CW Union that is, Goa Trade & Commercial Workers Union and she continued to be the member till the year 1994 and she was one amongst the 18 workers who were retrenched under settlement dated 17-11-94. That the dues payable to the workman arising out of the said settlement were offered to her vide letter dated 17-11-94 along with the cheque for Rs.29089/- and a cash amount of Rs. 1146/- towards unpaid wages of September, 1994 and Rs. 160/- towards productive incentive. That the workman accepted the cash amount but refused to accept the letter and payment of final settlement. That the workman wrote a letter dated 17-11-94 to the employer stating that she is on maternity leave and thereafter wrote another letter dated 1-1-95 informing the employer that she wants to resume her duties after the leave. That as per the records of the employer the workman had absented from duty from 4-10-94 without notice or intimation. That since the workman was retrenched as per settlement dated 17-11-94

signed in the conciliation proceedings with the recognised union of which the workman was the member the said settlement is binding on her and she cannot raise any dispute on the same. The employer stated that all the other 17 workers who were retrenched as per settlement dated 17-11-94 had accepted the settlement and the dues arising thereunder. The employer denied that the retrenchment is bad in law or that it is in violation of the provisions of Sec. 25F of the Industrial Disputes Act, 1947. The employer stated that the workman is not entitled to any relief as claimed by her and the reference is liable to be rejected.

4. The GT & CW Union filed written statement at Exb.7. The union stated that it is the only union in the establishment of the employer and it has time and again signed settlements and agreements with the employer on behalf of the workman. The union stated that the workman being its member enjoyed all the benefits of the earlier [illegible]ettlements and other revision in the service conditions. The union stated that a meeting was held with the committee members on 26-10-94 and 31-10-94 to discuss the issue of quantum of surplusage. The union stated that before signing the settlement a general body meeting was held and the workers were explained the terms and conditions of settlement and the decision on the retrenchment was approved by the majority of the workman in the General body meeting. The union stated that the matter was admitted in the conciliation and conciliation proceedings were held on 1-10-94, 26-10-94 and 31-10-94 and a settement was arrived at on 17-11-94 between the union and the employer. The union stated that the said settlement is binding on each and every workman. The workman thereafter filed rejoinder at Exb. 8.

5. On the pleadings of the parties, following issues were framed which are at Exb. 9.

1. Whether the Workman/Party I proves that the settlement dated 17-11-94 between the management of the Employer/ /Party II and the Goa Trade & Commercial Workers' Union is not binding on her?

2. Whether the Workman/Party I proves that the action of the Employer/Party II in retrenching her services is illegal and unjustified being in violation of Sec. 25-F of the Industrial Disputes Act, 1947?

3. Whether the Employer/Party II proves that the reference is not maintainable for the reasons stated in para. 2 of the written statement ?

4. Whether the Employer/Party II proves that the settlement dated 17-11-94 is a settlement signed in conciliation proceedings under Sec. 12 (3) of the I. D. Act, 1947, and hence binding on all the workman of the establishment including the Workman/Party I ?

5. Whether the Workman/Party I is entitled to any relief ?

6. What Award ?

6. My findings on the issues are as follows :

Issue No. 1. In the negative.
Issue No. 2: In the negative.
Issue No. 3: In the negative.
Issue No. 4: In the affirmative.
Issue No. 5: In the negative.
Issue No. 6: As per order below.

REASONS

7. *Issue No.3:* This issue is taken up first because it relates to the maintainability of the reference. The employer has challenged the maintainability of the reference. Adv. P. J. Kamat representing the employer, submitted that the settlement signed by the union with the employer is binding on all the workman of the establishment irrespective of the fact whether the workman is the member of the said union or not. He submitted that the settlement can be challenged by a group of workman or by the workman who are covered under the settlement. Adv. Shri Kundaikar representing the workman submitted on the other hand that the present reference has been made in view of the order of the High Court which has been produced at Exb. W-10 and therefore the reference is maintainable and the employer cannot challenge the said reference.

8. In the present case the Government referred the dispute because the workman contended that the settlement signed by the union with the management whereby the workman was retrenchment is not binding on her and hence she is entitled to reinstatement with full back wages.The order of the Hon. Bombay High Court, Panaji Bench dated 31st October, 1996 passed in Writ Petition No. 377/96 has been produced at Exb. W-10. From the said order it is seen that the Labour Commissioner, Panaji, had earlier refused to consider the application made by the workman raising the dispute regarding termination of her service on the ground that there was a settlement between the union and the employer. This order of refusal was challenged by the workman in the above Writ Petition and after hearing the parties the Hon. High Court passed the above order setting aside the order of the Labour Commissioner and directed him to decide the matter afresh in view of the observations by the Court in the order. In the said order the Hon. High Court observed as follows :

> "There is nothing on record to show whether the settlement is u/s 2(p) or u/s 12(3) of the Industrial Disputes Act, 1947. Even if there is a settlement u/s 12(3) of the Act, an employee affected or more specifically if he is not a member of the union can point out that the settlement is unfair and should not be accepted."

The reference of the dispute is therefore the consequence of the order dated 31st October, 1996 passed by the Hon. High Court in Writ Petition No. 377/96 Exb. W-10. As per the said order the workman was entitled to challenge the settlement. Therefore, there is no substance in the contention of the employer that the reference is not maintainable. Hence, I answer the issue No. 3 in the negative.

9. *Issue Nos. 1 and 4:* Both these issues are taken up together because they are interrelated. Adv. Shri Kundaikar, representing the workman submitted that the settlement was signed on 17-11-94 on which date the workman was not on duty. He submitted that the settlement was arrived at after the retrenchment of the workman and therefore it is not binding on her. He submitted that there was no authority from the workman to the union to enter into settlement and therefore the union could not have signed the said settlement. He submitted that in view of the above facts the settlement dated 17-11-94 is not binding on the workman. In support of this above contentions he relied upon the judgements of the Supreme Court in the case of Brooke Bond India Ltd., v/s Workman reported in 1981 2LLJ 194; the judgement of the Bomaby High Court in the case of Adil K. Patil v/s Tata Iron & Steel Co. Ltd., and Others reported in 1994 LIC 2394. Adv. Shri P. J. Kamat representing the employer submitted on the other hand that the employer has produced profit and loss account for the year 1994-95 which shows that the employer's business was running in loss and therefore some workers had to be retrenched. He submitted that the above facts showed that the retrenchment effected by the employer was bonafided. He submitted that the settlement dated 17-11-94 was signed in the course of the conciliation proceedings and therefore it has the binding effect on all the workers in the establishment. He submitted that since the workman was retrenched under the settlement she cannot challenge her retrenchment. He submitted that the workman in her evidence has admitted that she was the member of GT & CW Union. He submitted that there is no pleadings from the workman as regards the malafides in signing the settlement. In support of his above contention he relied upon the judgement of the Supreme Court in the case of (1) Herbertsons Ltd., v/s Their Workman and Others reported in 1950-83 Vol.13 SCLJ 203; (2) KC P Ltd., v/s Presiding Officer and Others reported in 1997 1 CLR 580; (3) Gurmail Singh & Others v/s State of Punjab reported in 1991 1 CLR 637 and (4) Barauani Refinery Pragatisheel Shramik Parishad v/s Indian Oil Corporation Ltd., reported in 1990 (61) FLR 203.

10. The GT & CW Union is a party to the present proceedings. The said union has filed the written statement but has neither cross examined the workman or employer's witness nor has led evidence in the matter. The workman in her deposition stated that she was admitted to Kamat Nursing Home, Ponda on 2-10-94 due to pre-delivery pains and that she had informed the employer about the same through her co-worker Nalini Verekar. She has produced the medical certificate dated 26-12-94 Exb.W-3 issued by Dr. Jayant Kamat. She stated that she delivered a baby boy on 25-10-94 and she produced the birth certificate at Exb.W-4. She stated that she had sent her leave application for the period 8-10-94 to 7-1-95 through said Mrs. Nalini Verekar. She stated that she wrote a letter dated 19-11-94 to the Gen. Manager as she did not get the information about her leave application. She produced the copy of the said letter along with the A/D card at Exb. W-5. She stated that she received a letter dated 21-1-95 from the employer informing her that her services were retrenched and she was asked to collect her dues from the office. She stated that on the expiry of the maternity leave she reported for work on 9-1-95 along with a joining report but she was not allowed to report and hence she made a complaint to the Labour Commissioner on 18-1-95. She stated that in the conciliation proceedings the employer filed reply mentioning that her services were terminated as per the settlement u/s 12 (3) of the Act. In her cross examination she stated that she is aware that the employer had taken loans from the banks and other financial institutions but she is not aware how much loss the employer suffered during the year 1994-95. She admitted that the increase in her salary was in view of the settlement dated 11th March, 1989 signed by the GT & CW Union with the management and she admitted the settlement produced at Exb.E-1 wherein her name is mentioned in the annexure "A-1" as Shanti Mardolkar. She also admitted the settlement dated 8th April, 1991 Exb. E-2 signed between GT & CW Union and the management and stated that in the annexure A-1 her name is mentioned as Veena Naik as she had already married by that time. She stated that when she signed the settlement Exb.E-2 she was the committee member and she was not the committee member after the year 1991 but was only a member. She did not admit the notice dated 13-8-94 put up on the notice board giving offer to the workers of being relieved as the employer's position was not good. She denied for want of knowledge that the copy of the said notice was given to the GT & CW Union or to the Labour Commissioner or to the Dy. Labour Commissioner, Margao, or that the employer decided to retrench the workers because no reply was received from the GT & CW Union or the workers. She denied for want of knowledge the meetings held by the GT & CW Union with the employer on the issue of retrenchment and stated that she did not know anything about what happened after 2-10-94 because she was on leave.

11. The employer examined their Accounts Officer Shri Sabir Mulla as the witness. He stated that the workers of the employer were the members of GT & CW Union and that the workman was also the member of the said union and continued to be so till the year 1994. He admitted the wage settlements dated 11-3-89 and 8-4-91 produced at Exb. E-1 and E-2 signed between the employer and the GT & CW Union. He also produced the wage settlement dated 8-8-95 at Exb. E-5 signed between the G T & CW Union and the employer. He stated that the financial position of the employer/company was bad as it had suffered accumulated loss

of Rs.1,13,24,705 at the end of 31st March, 1994 and he produced the profit and loss account for the year ending 31st March ,'94 at Exb. E-6. He stated that the employer had to either close the factory or reduce the work force and therefore a notice dated 13-8-94 was put up informing the workers about the financial position and giving the offer to the workers of leaving the service if they so desired and he produced the said notice at Exb.E-7.He stated that initially no settlement could be arrived at with the GT & CW Union but subsequently the said union agreed to reduce the workforce by 18 workers. He stated that they approached the conciliation officer who held meetings and in the meeting fixed on 17-11-94 a settlement was arrived at which he produced at Exb. E-8. He stated that out of 18 workers, 17 workers accepted the settlement but the workman did not accept it. In his cross examination he stated that the union had not given the list of workers who were its members but on the basis of the wage settlement signed by the union he could say that all the workers were the members of the union. He stated that 17 workers had accepted the settlement and they collected their dues at the factory on 17-11-94 and that since the workman had not approached, he went to the residence of the workman at the instance of the committee members. He denied the suggestion that the profit and loss account Exb. E-6 is a false and fabricated documents or that in the year 1993-94 the employer was making flourishing business or that the notice dated 13-8-94 Exb.E-7 was not put up on the notice board. He stated that the employer did not employ any new workers after filing the settlement dated 17-11-94. He denied the suggestion that it is the employer who picked up 18 workers and retrenched their services illegally. The services of the workman have been retrenched under the settlement dated 17-11-94 Exb.E-8 signed between the union and the employer.The workman had challenged the said settlement on the ground that it is not binding on her. She has admitted in her evidence that she was the committee member of the GT & CW Union when the settlement dated 8-4-91 Exb. E-2 was signed and after the year 1991 she was only the member of the said union. Though the GT & CW Union has not led any evidence in the matter it has filed the written statement wherein it is stated that it is the only union in the establishment of the employer and it has signed settlements and agreements with the employer. This statement of the union is supported by the employer's witness Shri S. Mulla. In the course of the evidence the employer has produced wage settlements dated 11-3-89 Exb. E-1, 8-4-81 Exb.E-2, and 8-8-95 Exb.E-5 signed between the GT & CW Union and the employer. The workman has also admitted in her evidence that her salary was increased pursuant to the settlement dated 11-3-89 Exb.E-1. The workman has not led any evidence to show that besides the GT & CW Union there was any other union of the workers in the establishment of the employer. The above evidence therefore proves that the GT & CW Union was the only union of the workers in the employer's establishment and that it was the recognised union.

12. The employer's contention is that since they were incurring losses and their financial position was not good, notice dated 13-8-94 Exb. E-7 was displayed on the notice board informing the workers about the financial position of the company and giving them offer of getting relieved from their service if they wish. The endorsement on the said notice shows that a copy of the said notice was sent to the Dy. Labour Commissioner, Margao which was received by his office on 13-8-94. The employer's contention is that since there was no response from the workers to the said notice the management took decision to reduce workforce and meetings were held between GT & CW Union and the employer on the issue of reduction in workforce. The GT & CW Union in its written statement has admitted about the decision taken by the employer to retrench some workers and holding of the meetings between the GT & CW Union and the employer on the issue of reduction in workforce. The GT & CW Union has also admitted that they approached the conciliation officer and that meetings were held by the conciliation officer and that ultimately on 17-11-94 settlement was arrived at. Since the employer held the meetings and discussions on the issue of reduction of workforce with the GT & CW Union, the stand taken by the union on this aspect is relevant and not the stand taken by the workman as admittedly the employer had no direct dealings with the workman. The employer has produced the settlement dated 17-11-94 at Exb. E-8. The settlement itself mentions that it is u/s 12(3) of the Industrial Disputes Act, 1947. In the recital of the said settlement it is mentioned that GT & CW Union as well as the employer jointly approached the conciliation machinery and after holding proceedings on 8-11-94 and 9-11-94 a settlement was brought about on the terms and conditions contained in the said settlements. The annexure to the said settlement contained the names of the 18 workers who are retrenched and the name of the workman figures on Sr. No.9. The said annexure also mentions the legal dues payable to each of the 18 workmen which includes notice pay and compensation. Sec. 2(e) defines conciliation proceedings as any proceedings held by a conciliation officer or board under the Act. A conciliation officer is expected to start his mediatory efforts if a dispute exists or apprehended. In the present case the employer wanted to reduce the workforce as they were facing financial difficulties. The employer and the GT & CW Union have admitted that the conciliation officer was approached to solve the issue regarding the reduction in workforce. As per the law, to start the conciliation proceedings it was not necessary that the dispute ought to have existed. The conciliation proceedings can be started even when the dispute is apprehended. The settlement Exb.E-8 shows that the conciliation officer held the conciliation meetings on two occasions before the settlement can be arrived at. Therefore the settlement dated 17-11-94 signed by the union with the employer was in the course of the conciliation proceedings and hence it is a settlement u/s 12(3) of the Act. The workman nowhere in her evidence challenged the settlement on the ground that it was not a settlement u/s 12 (3) of the Act. In her statement she only

stated that she reported for work on 9-1-95 along with the joining report and she was not allowed to report for work and that termination of her service is illegal and unjustified.

13. The question now is whether the settlement dated 17-11-94 is binding on the workman. Sec.18 of the Industrial Disputes Act, 1947 deals with the binding effect of the settlements. Sec 18 (3) of the Act deals with the binding effect of the settlements which are signed in the course of the conciliation proceedings. The said provision reads as follows:

Sec. 18 (3) : A settlement arrived at in the course of conciliation proceedings under this Act or an arbitration award in a case where a notification has been issued under sub-section (3A) of Section 10-A or an award of a Labour Court, Tribunal or National Tribunal which has become enforceable shall be binding on —

(a) all parties to the industrial dispute;

(b) all other parties summoned to appear in the proceeding as parties to the dispute, unless the Board, Arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, records the opinion that they were so summoned without proper cause;

(c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;

(d) where a party referred to in clause (a) or clause (b) is composed of workman, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute, and all persons who subsequently become employed in that establishment or part.

14. The said settlement was signed admittedly when the workman was not on duty as according to her she was on leave from 2-10-94 and thereafter she was on maternity leave from 8-10-94 to 7-1-95. The absence of the workman from 2-10-94 is admitted by the employer. However, the employer has denied that the workman was on leave from 2-10-94 or was on maternity leave from 8-10-94. The employer has also denied that any leave application was received from the workman. No evidence has been produced by the workman to prove that she had applied for leave or maternity leave and that the same was granted to her. However, the fact remains that she was not on duty when the settlement was signed. Even then, this fact by itself does not make the settlement illegal as it is signed by the GT & CW union in the conciliation proceedings and it was not necessary that the workman ought to have been on duty on the date of the signing of the settlement. The workman has challenged the settlement on the ground that she had not authorised the GT & CW Union to sign the settlement. In fact she never stated in her evidence that she had not authorised the union to enter into the settlement nor she stated that the union had no authority to sign the settlement dated 17-11-94. Adv. Shri Kundaikar, representing the workman has not been able to point out which provision required the authority from the workman to the union to enter into settlement dated 17-11-94. In my view when a settlement is entered into by the union with the employer in the course of the conciliation proceedings, specific authority from each workman to the union to enter into settlement is not required. Adv. Shri Kundaikar, has relied upon the decision of the Supreme Court in the case of Brooke Bond India Ltd. (supra) and of the Bombay High Court in the case of Tata Iron and Steel Ltd. (supra). I have gone through the said decision and in my view they are not applicable to the present case. In the case of Brooke Bond India Ltd. (supra) a reference was pending before the Industrial Tribunal and during the pendency of the reference a written agreement was signed between the management and the office bearers of the Trade Unions settling the dispute covered under the reference and some other dispute. Subsequently, the Executive Committee of one other Trade Union challenged the said agreement giving rise to the question whether the agreement was a settlement within the meaning of Sec. 2(p) of the Industrial Disputes Act. It was found that the office bearers who signed agreement were not competent to do so. The Supreme Court held that unless the office bearers who signed agreement were authorised by the Executive Committee of the union to enter into a settlement or the constitution of the union contained a provision that one or more of its members would be competent to settle a dispute with the management, no agreement between any office bearer of the union and the management can be called a settlement as defined u/s 2(p) of the Act. The Supreme Court further held that the Delhi High Court in the case of Hindustan Housing Factory Ltd.,V/s Hindustan Housing Factory Employees Union reported in 1969 LIC 1450 has correctly held that where a settlement is alleged to have been arrived at between the employer and one or more office bearers of the union and the authority of the office bearers who signed the memorandum of settlement is challenged or disputed, the said authority or authorisation of the office bearers who signed the settlement has to be established as a fact and it is not enough if the employer merely point out and relies upon the fact that the settlement was signed by one or more of the office bearers of the union. The Supreme Court held that this is the correct law on the issue. It is therefore obvious that in the case of Brooke Bond India Ltd.(supra) what was challenged was the authority of the office bearers of the union to sign the agreement and it was found that they were neither authorised by the Executive Committee nor they had authority under the constitution of the union to settle the dispute. In the present case the workman never challenged the authority of the persons who signed the settlement on behalf of the union. It is not the contention of the workman that the person who signed the settlement on behalf of the GT & CW Union were not office bearers of the union or that

they had no authority from Executive Committee or under the constitution of the union to enter into settlement. The only contention of the workman is that she had not authorised the union to enter into settlement. Besides, the Supreme Court has held that the settlement involved in the case was a settlement arrived at not in the conciliation proceedings. In my view therefore the decision of the Supreme Court in the case of Brooke Bond India Ltd. (supra) is not applicable to the present case. In the case of Tata Iron & Steel Co. Ltd., (supra) the issue involved was totally different. In that case the issue involved was whether the letter dated 7th February, 1986 written by Tata Head Office Employees Association to the Company is a settlement within the meaning of Sec. 2(p) of the Act and hence binding on the parties to the settlement. The Bombay High Court held that the requirements contained in clause 2(p) of Rules 62 of the Industrial Disputes (Bombay) Rules, 1957 are mandatory and non compliance of this requirement will have a serious dent on the binding effect on any settlement arrived at between the parties. The High Court held that in the case before it a letter written by the Union to the Employer was neither in the form XXVI nor it is signed by both the parties nor its copies have been sent to any of the authorities mentioned in Rule 62 and therefore the said letter cannot be termed as settlement within the meaning of Sec.2(p) of the Act and as such cannot have binding effect u/s 18 of the Act. In the present case the workman had challenged the binding effect of the settlement dated 17-11-84 not on the ground that the settlement does not fulfil the requirement of Rule 58 of the Industrial Disputes Act (Central) Rules, 1957 or that it is not a settlement within the meaning of Sec.2 (p) of the Act. In the present case the question of complying of with the provisions of Sec. 2(p) of the Act did not arise because the settlement in question was signed in the course of conciliation proceedings and not otherwise. Nowhere in the above referred decisions it has been held that the authority of the individual workman is required authorising the union to enter into settlement. I would also like to point out that the decision of the Supreme Court as well as of the Bombay High Court in the above referred case was in respect of the case where the settlement was not signed in the course of the conciliation proceedings but the settlements were signed otherwise in the course of the conciliation proceedings whereas, in the present case the settlement in question is a settlement signed u/s 12(3) of the Act i .e., in the course of the conciliation proceedings.

15. The employer's contention is that the retrenchment had to be effected because the company's business was incurring losses.The employer's witness Shri S.Mulla stated in his deposition that at the end of 31st March, 1994 the accumulated loss was Rs.1,13,24,705. The employer has produced the profit and loss account for the year ending 31st March, 1994 at Exb. E-6. This document supports the above contention of the employer. The workman has disputed the said profit and loss account by simply stating that the same is false and fabricated. However, no evidence whatsoever has been led by the workman to show that the said accounts are false and fabricated.The profit and loss account which has been produced by the employer at Exb. E-6 is the audited account.The said accounts also contain the auditors report. In the absence of any evidnece to the contrary from the workman the presumption is that the profit and loss account produced by the employer is the true and correct account. The above document proves that the financial position of the employer-company was not sound and its business was running in loss. The services of the workman alongwith 17 other workmen have been retrenched under the settlement dated 17-11-94 Exb.E-8.The said settlement is signed in the course of the conciliation proceedings. The employer's contention is that the said settlement is binding on the workman u/s 18(3) of the Industrial Disputes Act, 1947. The employer has relied upon various judgements of the Supreme Court in support of their above contention which are mentioned earlier. In the case of Barauani Refinery Pragatisheel Shramik Parishad (supra) the Supreme Court has held as follows:

> "It may be seen on a plain reading of sub.-section 1 & 3 of Sec. 18 that settlements are divided into two categories namely (i) arrived at outside the conciliation proceedings and (ii) those arrived at in the course of the conciliation proceedings. A settlement which belongs to the 1st category has limited application that it merely binds the parties to the aggreement but the settlement belonging to the 2nd Category has extended application since it is binding on all the parties to the industrial dispute, to all others who were summoned to appear in the conciliation proceedings and to all persons employed in the esatblishment or part of the establishment, as the case may be, to which the dispute related on the date of the dispute and to all others who joined the establishment thereafter. Therefore, a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all the workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent it departs from the ordinary law of contract. The object obviously is to uphold the sanctity of the settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement. There is an underlying assumption that a settlement reached with the help of the conciliation officer must be fair and reasonable and can therefore safely be made binding not only the workman belonging to the union signing the settlement but also on others. That is why a settlement arrived at in the course of conciliation proceedings is put on par with an award made by an adjudicating authority."

In the case of Herbertson Ltd. (supra) the Supreme Court has held as follows :

"When a recognised union negotiates with an employer the workers as individuals do not come into the picture. It is not necessary that each individual worker should know the implications of the settlement since a recognised union, which is expected to protect the legitimate interests of labour, enters into a settlement in the best interests of labour. This would be the normal rule. We cannot altogether rule out exceptional cases where there may be allegations of malafides, fraud or even corruption or other inducements. Nothing of that kind has been suggested against the President of the 3rd respondent in this case. That being the position, prima facie, this is a settlement in the course of collective bargaining and therefore is entitled to due weight and considerations."

16. Thus, what emerges from the judgements of the Supreme Court in the above referred cases is that normally an union protects the legitimate interest of the workers and enters into a settlement with the employer in the best interest of the workers. If malafides, fraud, corruption are attributed to the union while arriving at a settlement the same are to be proved by the party who challenges the settlement on those grounds. Further when an union and more particularly a recognised union signs a settlement in the course of conciliation proceedings a workman as an individual does not come into picture and each and every workman need not know the implications of the settlement. Further a settlement signed by an union and more particularly by a recognised union, the same is binding on all the workers in the establishment including those who are the members of the minority union and have objections to the settlement. The object of this is to uphold the sanctity of the settlement which has been arrived at with the help of the conciliation officer and to discharge an individual or a minority union from scuttling the settlement. There is presumption that the settlement which is arrived at in the course of the conciliation proceedings is fair and reasonable.

17. In the instant case the workman has admitted that she was the member of GT & CW Union and the said union is the recognised union in the employer's establishment as is obvious in view of the wage settlements signed by the said union with the employer. The settlement dated 17-11-94 Exb. E-8 was signed in the course of the conciliation proceedings and therefore in view of the judgment of the Supreme Court in the case of Barauani Refinery Pargatisheel Shramik Parishad (supra) and Herbertson Ltd. (supra) the said settlement is binding on the workman. The workman never pleaded malafides or fraud or corruption against the GT & CW Union in signing the said settlement nor any evidence has been brought on record by the workman in that respect. The workman has also not challengd the said settlements on the ground that it is not fair and reasonable nor any evidence has been brought on record by the workman in respect. On the contrary by producing the profit and loss account for the year ending 31st March, 1994, the employer has proved that their financial position was not good and therefore they were justified in retrenching 18 workers. Adv. Shri Kundaikar, representing the workman has sought to argue that the settlement was arrived at after the retrenchment of the workman in the present case and that therefore it is not binding on her. There is no substance in this contention of Adv. Shri Kundaikar. The settlement is not signed after the retrenchment of the workman but as per the settlement the retrenchment of the workman is made effective from 1-11-94. Admittedly the workman was absent from duty from 2-10-94. In the circumstances I hold that the employer has succeeded in proving that the settlement dated 17-11-94 is a settlement signed in conciliation proceedings and hence is binding on all the workers of the employer's establishment as per Sec.18(3) of the Industrial Disputes Act,1947. I, further hold that the workman has failed to prove that the said settlement dated 17-11-94 is not binding on her. Even if it is assumed for a moment that the settlement dated 17-11-94 is a settlement arrived at otherwise then in the course of the conciliation proceedings, still it shall be binding on the workman. I am supported in my view by the judgement of the Andhra Pradesh High Court in the case of Eid Barry (India) Ltd., v/s Labour Court, Guntur and Others reported in 1992 LIC 278. In this case the Andhra Pradesh High Court has held that in respect of the settlement which is arrived at otherwise then in the course of the conciliation proceedings if it is between an employee and the employer it would be binding on that particular employee and the employer and if it is between a recognised union of the employees and the employer it will bind all the members of the union and the employer. The High Court has held that it would be binding on all the members of the union is a necessary corollary of collective bargaining in the absence of allegation of malafide or fraud and merely because an individual employee or some of the employees did not agree to the terms of the settlement entered into between a recognised union and the employer he/they cannot be permitted to contend that it is not binding on him/them. In the circumstances, I answer the issue no.1 in the negative and the issue no. 4 in the affirmative.

18. Issue No. 2 : The workman's contention is that the employer has not complied with the provisions of the Sec. 25F of the Industrial Disputes Act, while retrenching her services. Adv. Kundaikar, representing the workman submitted that though the retrenchment was made on 1-11-94, the cheque towards the payment of legal dues was sent to the workman on 17-11-94 which according to him, is not as per the law. Adv. Kamat, representing the employer submitted on the other hand that the legal dues as mentioned in the statement of full and final settlement account Exb.E-9 along with the unpaid wages in cash were offered to the workman on 17-11-94 but she accepted only the cash amount and refused to accept the cheque towards her legal dues. He submitted that since the offer was made and the same was refused by the workman as admitted by her in her rejoinder,

there is compliance of the provisions of Sec.25F of the Act by the employer. He submitted that notice to the Government was not given because the retrenchment was as per the settlement signed in the conciliation proceedings. He submitted that even otherwise giving of notice is only a directory provision and not mandatory. Sec.25F of the Industrial Disputes Act, 1947 lays down that at the time when the services of a workman are to be retrenched he should be given one month's notice or he should be paid notice pay as well as the retrenchment compensation. Adv. Shri Kundaikar, representing the workman has submitted that though the retrenchment of the workman was made on 1-11-94 the cheque towards payment of legal dues was sent to the workman only on 17-11-94 and as such the payment is contrary to law. This submission of Adv. Kundaikar has no substance. The retenchment of the workman was not made on 1-11-94 but it was made effective from 1-11-94 as per the settlement dated 17-11-94. The settlement was signed by the GT & CW Union on 17-11-94 and under that settlement it was agreed that the retrenchment would be effective from 1-11-94. This does not mean that the retrenchment was made by the employer on 1-11-94 and that therefore the retrenchment compensation ought to have been paid on 1-11-94. This being the case the question of complying with the provisions of Sec.25F of the Act on 1-11-94 did not arise. The employer's witness Shri S. Mulla has stated in his deposition that the workman was offered the dues payable to her under the settlement dated 17-11-94 and that along with the statement was enclosed a cheque for Rs. 29089 and cash amount of Rs. 809/-. He has stated that the workman accepted the cash amount towards unpaid wages but did not accept the cheque. He has produced the statement of final account at Exb.E-9. In his cross examination he stated that he had approached the workman personally along with the committee members at her residence on 17-11-94 and offered dues payable to her under the settlement. He denied the suggestion put to him by the workman that he had not gone to her residence on 17-11-94 to offer dues to her. However, there is an admission from the workman about the offering of the legal dues to her after the signing of the settlement, in her pleadings. The employer stated in para. 14 of their written statement that the dues of the workman arising out of the settlement dated 17-11-94 were offered to the workman vide letter dated 17-11-94 alongwith the cheque for Rs.29089 dated 17-11-94 and the cash of Rs.1146 towards unpaid wages of September, 1994 and Rs.160 towards production incentive. The employer stated in the written statement that the workman accepted the cash amount of Rs. 1146 and Rs.106 but refused to accept the letter and the payment of final settlement. The workman has filed rejoinder to the written statement of the employer. In para. 16 of the rejoinder the workman has dealt with the above pleadings of the employer made in para. 14 of the written statement. In the rejoinder the workman has stated that merely because an offer for payment was made it did not absolve the employer from legitimate duties. She stated that mere frivolous offer and issuance of the payments cannot legalise the illegal act of the employer. She has admitted that she collected the unpaid wages of September, 1994, stating that payment is not a charity but her hard earned incentives which had accrued out of services rendered. She has stated that the acceptance of the said amount did not in any manner prejudice her rights. From the above pleadings in the rejoinder it is clear that the workman admitted that she was offered a cheque dated 17-11-94 for Rs. 29089/- along with the letter dated 17-11-94 and the statement of the final accounts besides the cash amount of Rs.1146/- towards unpaid wages of September, 1994 and Rs.160/- towards production incentive and that she accepted the cash amount offered to her but refused to accept the cheque for Rs.29089/-. The above pleadings support the statement of the employer's witness Shri S. Mulla that he had gone to the residence of the workman on 17-11-94 and offered to her the cheque for Rs. 29089/- towards the payment of her legal dues under the settlement as per the statement of final account and the workman refused to accept the cheque but accepted the cash amount.The statement of final account produced at Exb.E-9 gives the break-up of the legal dues payable to the workman. The said break up shows the amount of retrenchment compensation as well as the notice payable to the workman and the total amount payable is shown as Rs. 29089/-.Thus the employer has established that the notice pay and the retrenchment compensation alongwith other dues were offered to the workman on 17-11-94 but it is the workman who refused to accept the same because according to her the act on the part of the employer in retrenching her services was illegal. The Calcutta High Court in the case of Chandra Kumar Datta V/s Secretary, M/s Frank Ross & Co.Ltd., reported in 1971 LIC 790 has held in that case that since the Respondent Company offered to pay to the Appellant Workman one month's wages in lieu of notice and also retrenchment compensation which the appellant workman declined to accept, it cannot be said that there was non compliance with sub section (A) and (B) of Sec.25F of the Act. In the said case one month's wages in lieu of notice and retrenchment compensation was sent to the appellant workman by money order but for some reason or other the appellant workman did not choose to accept the notice pay and the retrenchment compensation. The High Court held that it cannot be said that the respondent company did not tender to the appellant the amount due to him under sub.-section (A) & (B) of Sec. 25F. In the present case also the notice pay and retrenchment compensation were offered to the workman but she refused to accept the same. In the circumstances it cannot be said that the employer violated the provisions of Sec. 25F (A) & (B) of the Act as contended by the workman.

19. The other requirement of Sec.25F is the giving of notice to the Government. Clause (C) of the said section provides for giving notice to the Government. In the present case the settlement under which the retrenchment was effected was signed in the course of the conciliation proceedings. The conciliation officer is the authority appointed by the Government. Therefore since the settlement itself was signed before the Conciliation

Officer there was no question of giving notice to the Government as held by the Calcutta High Court in the case of Chandra Kumar Datta (supra). Even otherwise the Supreme Court in the case of Bombay Union of Journalists v/s State of Bombay reported in 1964 ILLJ 351 has held that Clause (C) of Section 25F cannot be held to be condition precedent even though it has been included in Sec. 25F along with Clause (A) & (B) which prescribes conditions precedent. The Supreme Court has held that unlike Clauses (A) & (B), Clause (C) is not intended to protect the interest of the workman as such and it is only intended to give intimation to the appropriate Government about the retrenchment and that only helps the Government to keep it self informed about the conditions of employment in different industries within its region. The Supreme Court therefore held that Clause (C) does not constitute a condition precedent which has to be fulfilled before retrenchment can be validly effected and that therefore non compliance of Clause (C) would not invalidate retrenchment. This being the case though the employer did not give notice to the Government in the present case as required under Clause (C) of the Act, the retrenchment is still valid. In the circumstances, I hold that the workman has failed to prove that the employer retrenched her services in violation of the provisions of Sec. 25 F of the Industrial Disputes Act, 1947 or that the action of the employer of retrenching her services is illegal. I, therefore, answer the issue No. 2 in the negative.

20. Issue No.5: This issue pertains to the relief to which the workman is entitled to. The services of the workman were retrenched w. e. f. 1-11-94 as per the settlement dated 17-11-94 Exb. E-8 signed by the GT & CW Union with the employer in the course of the conciliation proceedings. It has been held by me that the said settlement is binding on the workman. It has been further held by me that the workman has failed to prove that the action of the employer of retrenching her services is illegal and unjustified. This being the case the workman is not entitled to the relief of reinstatement in service or any other relief. I, therefore hold that the workman is not entitled to any relief and hence answer the issue No. 5 in the negative.

In the circumstances, I pass the following order.

ORDER

It is hereby held that the Memorandum of Settlement No. IRM/COM/(98)/94 dated 17-11-1994 signed between the management of M/s. Goa Resistors Pvt. Ltd., Collem, Goa, and its workman represented by Goa Trade & Commercial Workers Union is binding on the workman Mrs. Veena V. Naik and hence her demand for reinstatement is not legal and justified. It is hereby further held that the workman Mrs. Veena V. Naik is not entitled to any relief.

Pronounced in the Open Court.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

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